

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ROBERTO DURAND,

Plaintiff,

v.

HERNANDEZ,

Defendant.

Case No. 3:22-cv-00544-ART-CSD
ORDER DISMISSING AND CLOSING
CASE

Plaintiff Roberto Durand brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Ely State Prison. (ECF No. 1-1). On January 26, 2023, this Court ordered Durand to file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or before March 27, 2023. (ECF No. 5). The Court warned Durand that the action could be dismissed if he failed to timely comply with the order. (*Id.* at 2). That deadline expired and Durand did not file an application to proceed *in forma pauperis*, pay the full \$402 filing fee, or otherwise respond.

I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440–41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the

1 public's interest in expeditious resolution of litigation; (2) the Court's need to
2 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
3 favoring disposition of cases on their merits; and (5) the availability of less drastic
4 alternatives. *See In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217,
5 1226 (9th Cir. 2006) (quoting *Malone*, 833 F.2d at 130).

6 The first two factors, the public's interest in expeditiously resolving this
7 litigation and the Court's interest in managing its docket, weigh in favor of
8 dismissal of Durand's claims. The third factor, risk of prejudice to defendants,
9 also weighs in favor of dismissal because a presumption of injury arises from the
10 occurrence of unreasonable delay in filing a pleading ordered by the court or
11 prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir.
12 1976). The fourth factor—the public policy favoring disposition of cases on their
13 merits—is greatly outweighed by the factors favoring dismissal.

14 The fifth factor requires the Court to consider whether less drastic
15 alternatives can be used to correct the party's failure that brought about the
16 Court's need to consider dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983,
17 992 (9th Cir. 1999) (explaining that considering less drastic alternatives *before*
18 the party has disobeyed a court order does not satisfy this factor); *accord*
19 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002). Courts "need not
20 exhaust every sanction short of dismissal before finally dismissing a case, but
21 must explore possible and meaningful alternatives." *Henderson v. Duncan*, 779
22 F.2d 1421, 1424 (9th Cir. 1986). Because this Court cannot operate without
23 collecting reasonable fees, and litigation cannot progress without a plaintiff's
24 compliance with court orders, the only alternative is to enter a second order
25 setting another deadline. But the reality of repeating an ignored order is that it
26 often only delays the inevitable and squanders the Court's finite resources. The
27 circumstances here do not indicate that this case will be an exception because
28 there is no showing that Durand needs additional time or evidence that he did

1 not receive the Court's order. Setting a second deadline is not a meaningful
2 alternative given these circumstances. So the fifth factor favors dismissal.

3 **II. CONCLUSION**

4 Having thoroughly considered these dismissal factors, the Court finds that
5 they weigh in favor of dismissal. It is therefore ordered that this action is
6 dismissed without prejudice based on Plaintiff Roberto Durand's failure to file a
7 fully complete application to proceed *in forma pauperis* or pay the full \$402 filing
8 fee in compliance with this Court's January 26, 2023, order. The Clerk of Court
9 is directed to enter judgment accordingly and close this case. No other documents
10 may be filed in this now-closed case. If Roberto Durand wishes to pursue his
11 claims, he must file a complaint in a new case and either pay the required filing
12 fee or properly apply for *in forma pauperis* status.

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14 DATED THIS 14th day of April 2023.

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16 ANNE R. TRAUM
17 UNITED STATES DISTRICT JUDGE
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